

**IN THE STATE COURT OF DOUGLAS COUNTY  
STATE OF GEORGIA**

**KRISTON CARTER,**

**Plaintiff,**

**v.**

**JOSEPH A. ABERNATHY individually,  
M&M TRANSPORTATION, LLC**

**Defendant.**

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\*  
\*  
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**Civil Action No.: 18SV00516**

**COMPLAINT FOR DAMAGES**

COMES NOW KRISTON CARTER ("Plaintiff"), and hereby makes and files this Complaint for Damages against JOSEPH A. ABERNATHY ("Defendant Abernathy") and M&M Transportation, LLC ("Defendant M&M Transportation"), by showing this Honorable Court the following:

**PRELIMINARY STATEMENT**

1.

This is a civil action brought by Plaintiff Kriston Carter for his personal injuries and property damage and for the recovery of damages. Plaintiffs' injuries arise out of a motor vehicle collision that occurred on October 20, 2016 in Carroll County, Georgia that involved a tractor-trailer operated by Joseph A. Abernathy during the course and scope of his employment for Defendant M&M Transportation, LLC, and a motor vehicle operated by Plaintiff Kriston Carter.

**PARTIES**

2.

Plaintiff Kriston Carter, a Georgia resident (Douglas County), brings this action individually for the property damage and personal injuries and consequent damages he sustained



in a motor vehicle wreck that involved a tractor-trailer operated by Joseph A. Abernathy and a motor vehicle operated by Plaintiff.

### **DEFENDANTS**

3.

Defendant M&M Transportation was at all times relevant to this incident as the owner of the transport tractor-trailer driven by their employee Joseph A. Abernathy. Defendant M&M Transportaion is a foreign corporation incorporated under the laws of Alabama, which has its principal place of business in Alabama. Defendant M&M Transportation is not licensed to do business in the state of Georgia although it operates over and utilizes the highways in the state of Georgia. At the time of the incident complained of herein, Defendant M&M Transportation authorized one of its tractor-trailer rigs to operate in the State of Georgia. Defendant Abernathy was the operator of Defendant M&M Transportation's tractor-trailer when he caused the motor vehicle collision in Carroll County, Georgia.

4.

Defendant Abernathy is an Alabama resident and may be served at his residence located at 12250 AL Highway 23, Ashville, Alabama 35953, Saint Clare County, Alabama.

### **JURISDICTION**

5.

Defendant Abernathy was at all times relevant to this incident as the operator of the tractor-trailer that caused the motor vehicle collision with Plaintiff Carter during the course and scope of his employment with Defendant M&M Transportation.

6.

This Court has subject matter jurisdiction over the personal injury and property damage claims asserted herein and will have personal jurisdiction over Defendant Abernathy once served pursuant to O.C.G.A. § 40-12-1.

7.

This Court has subject matter jurisdiction over the personal injury and property damage claims asserted herein and will have personal jurisdiction over Defendant M&M Transportation once served pursuant to O.C.G.A. § 9-11-4(d)(1).

### **VENUE**

8.

By reason of O.C.G.A. § 40-12-3 and the facts set forth herein, venue in this Court is proper as to Defendant M&M Transportation and Defendant Abernathy.

### **FACTS**

9.

Plaintiff realleges and incorporates paragraphs 1 through 8 as fully set forth herein.

10.

On October 20, 2016 at approximately 1:12 p.m., Kriston Carter (“Mr. Carter”) was driving a 2005 Chevrolet Express Van G2 westbound on I-20 east of exit number 26 in Douglas County, Georgia.

11.

Mr. Carter was facing forward, wearing his seat belt and fully cognizant of the surrounding traffic.



12.

At the same time, Joseph Abernathy (“Mr. Abernathy”) was driving a 2007 Freight Tractor Trailer westbound on I-20 east of exit number 26 in Douglas County, Georgia.

13.

At all times relevant, Joseph Abernathy’s vehicle was traveling directly in front of Kriston Carter’s vehicle.

14.

For reasons unknown, Joseph Abernathy failed to properly secure his load, allowing a large piece of scrap metal to escape and crash into Mr. Carter’s windshield.

15.

Both, Mr. Carter and Mr. Abernathy pulled off on exit number 24 in Douglas County, Georgia and reported the collision.

16.

The scrap metal caused significant damage to Mr. Carter’s vehicle which required it to be towed.

17.

Mr. Carter then contacted his wife who arrived to the scene.

18.

After continued complaints of pain, Mr. Carter’s wife transported him to Wellstar Douglas Hospital.

19.

Investigating Officer W. Thornton issued Mr. Abernathy a traffic warning for faulty equipment.

## **INJURIES AND DAMAGES**

20.

Plaintiff realleges and incorporates paragraphs 1 through 19 as fully set forth herein.

21.

The impact to the Plaintiff's vehicle was disabling and resulted in damage to the Plaintiff's person and property.

22.

As a direct and proximate result of this collision, Plaintiff sustained painful personal injuries including, but not limited to, upper back pain, contusion of finger, medial meniscal injury, skin sensation disturbance, headaches, cervical facet joint pain, lumbar facet joint pain, low back strain, and strain of neck muscle.

23.

As a direct and proximate result of this collision, Plaintiff KRISTON CARTER was required to undergo medical care from medical care providers and incurred medical expenses in excess of **\$159,357.47** - a specific amount to be proven at trial.

24.

As a direct and proximate result of this collision, Plaintiff suffered physical pain and suffering as well as emotional and psychological distress and may continue to suffer in the future.

## **COUNT I** **NEGLIGENCE (ABERNATHY)**

25.

Plaintiff realleges and incorporates paragraphs 1 through 24 as fully set forth herein.



26.

Defendant Abernathy was negligent in failing to maintain a proper lookout, failing to exercise due care, failing to secure his load, faulty equipment, operating a car in a reckless disregard for the safety of others, and further acts of negligence as may be shown at trial.

27.

Plaintiff is entitled to recover from Defendant Abernathy for all damages allowed under Georgia law caused by Defendant's negligence.

**COUNT II**  
**NEGLIGENCE PER SE (ABERNATHY)**

28.

Plaintiff realleges and incorporates paragraphs 1 through 25 as fully set forth herein.

29.

Defendant Abernathy committed negligence per se, or negligence as a matter of law, in violating the following laws of the State of Georgia: O.C.G.A § 10-6-254: Operating a motor vehicle without adequately securing load; O.C.G.A § 40-6-241: failing to exercise due care; and O.C.G.A § 10-6-390: Driving his 2007 Freight Tractor Trailer in reckless disregard for the safety of persons and/or property.

30.

As a direct and proximate result of Defendant Abernathy's negligence per se, Plaintiff suffered and will continue to suffer from personal injuries, emotional and mental distress and has incurred medical expenses as described in this Complaint. Plaintiff is entitled to recover the damages described in these paragraphs and all other damages allowed under Georgia law as a result of Defendant Abernathy's negligence per se.

**COUNT III**  
**LIABILITY OF THE DEFENDANT M&M TRANSPORTATION, LLC**

31.

M&M Transportation, LLC is liable to the Plaintiff under the doctrine of respondeat superior for the tortious acts and omissions committed by its agents, officers and employees including, but not limited to, Joseph A. Abernathy.

**COUNT VI: NEGLIGENT TRAINING, SUPERVISION AND RETENTION**  
**(DEFENDANTS M&M TRANSPORTATION, LLC)**

32.

Plaintiff realleges and incorporates Paragraphs 1 through 31 as if fully set forth herein.

33.

Defendants M&M Transportation had an independent duty to exercise reasonable care in the training, supervision, and retention of its staff/employees.

34.

Defendants M&M Transportation breached its duty of care with regard to the hiring, training, supervision, and retention of Defendant Abernathy.

35.

As the direct and proximate result of the breach of its duty of care with regard to the training, supervision, and retention of Joseph A. Abernathy, Plaintiff has suffered physically, mentally and emotionally, continues to suffer mentally and emotionally and will suffer mentally and emotionally in the future for which he is entitled to recover damages from Defendant M&M Transportation.

*[SIGNATURE BLOCK ON NEXT PAGE]*



This 16<sup>th</sup> day of October, 2018.

Respectfully submitted,

/s/ Robert O. Bozeman

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ROODGINE D. BRAY

Georgia Bar No. 543876

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Decatur, Georgia 30034

(404) 244-2004

(404) 244-2020 (Fax)



STATE COURT OF DOUGLAS COUNTY  
GEORGIA  
SUMMONS

No. 18SV00516

Date Summons Issued and Filed  
10.16.18

/S/ Tammy M. Howard  
Deputy Clerk

Deposit Paid: \$ \_\_\_\_\_

[ ] ANSWER

[X] JURY

Kriston Carter  
4090 Jackie Drive  
Douglasville, GA 30135

\_\_\_\_\_  
(Plaintiff Name and Address)

vs.

M&M Transportation, LLC  
11833 AL Highway 23  
Ashville, AL 35953

\_\_\_\_\_  
(Defendant Name and Address)

**TO THE ABOVE-NAMED DEFENDANT:**

You are hereby summoned and required to file with the Clerk of State Court, Douglas County Courthouse, 8700 Hospital Drive, Douglasville, GA 30134 and serve upon the plaintiff's attorney, to wit:

Roodgine D. Bray

\_\_\_\_\_  
(Name)

4153-C Flat Shoals Parkway Suite 332

\_\_\_\_\_  
(Address)

404-244-2004

073561

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Georgia Bar No.)

An **ANSWER** to the complaint which is herewith served upon you, within thirty (30) days after service upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. (Plus cost of this action.)

\_\_\_\_\_

\_\_\_\_\_  
Defendant's Attorney

\_\_\_\_\_  
Third Party Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
Georgia Bar No.

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
Georgia Bar No.

\_\_\_\_\_

**TYPE OF SUIT**

☐ Account

☒ Personal Injury

Principal \$

\$159,357.47

☐ Contract

☐ Medical Malpractice

Interest \$

TBD

☐ Note

☐ Legal Malpractice

Atty Fees \$

TBD

☐ Trover

☐ Other

☐ Transferred From

(Attach BLUE to Original and White to Service Copy of complaint)

STATE COURT OF DOUGLAS COUNTY  
GEORGIA  
SUMMONS

No. \_\_\_\_\_

Date Summons Issued and Filed \_\_\_\_\_

Kriston Carter  
4090 Jackie Drive  
Douglasville, GA 30135  
\_\_\_\_\_  
(Plaintiff Name and Address)

Deputy Clerk \_\_\_\_\_

Deposit Paid: \$ \_\_\_\_\_

vs.  
Joseph A. Abernathy  
12250 AL Highway 23  
Ashville, AL 35953-3226  
\_\_\_\_\_  
(Defendant Name and Address)

[ ] ANSWER

[X] JURY

## TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of State Court, Douglas County Courthouse, 8700 Hospital Drive, Douglasville, GA 30134 and serve upon the plaintiff's attorney, to wit:

Roodgine D. Bray

(Name)

4153-C Flat Shoals Parkway Suite 332

(Address)

404-244-2004

(Phone Number)

073561

(Georgia Bar No.)

An **ANSWER** to the complaint which is herewith served upon you, within thirty (30) days after service upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. (Plus cost of this action.)

\_\_\_\_\_  
Defendant's Attorney\_\_\_\_\_  
Third Party Attorney\_\_\_\_\_  
Address\_\_\_\_\_  
Address\_\_\_\_\_  
Phone No.\_\_\_\_\_  
Georgia Bar No.\_\_\_\_\_  
Phone No.\_\_\_\_\_  
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